IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPEAL NO.199 OF 2006
WITH
CRIMINAL APPLICATION NO.211 OF 2006

Mr. R. N. Shukla. ..Appellant.
Vs.
The State of Maharashtra. ..Respondent.

Mr. J.A. Udaipuri i/by M/s. Udaipuri & Company for the Applicant.

Mr.Rajesh More, APP. for the State.

CORAM : R.S. MOHITE,J.
DATED : 5/4/2006.

P.C.

1. Heard both sides.

2. Appeal is admitted.

3. By consent, appeal is heard forthwith.

4. Perused the record and proceeding. By the impugned judgment and order passed by the II Adhok Addl. Sessions Judge, Palghar dated 6.2.2006 the accused Rakeshkumar Navnath Shukla is convicted for an offence punishable under Section 325 of the I.P.C. and sentenced to suffer R.I. for 5 years and to pay a fine of Rs.5000/- in default to suffer R.I. for six months.

5. The Advocate for the applicant states that only limited argument in this matter is that the conviction should be changed under Section 338 of the I.P.C. as there was no intention to cause any grievous hurt to the injured unknown lady Gurmit Kaur. In my view, the conviction imposed under Section 325 is improper and in fact, since the injury was caused by dangerous weapon double barrel gun, the conviction, if at, all ought to have been under Section 326 of the I.P.C. However, it is further argued that the grievous hurt was caused voluntarily. The prosecution case was that the complainant alongwith her husband went to the State Bank of India, Bhoisar Branch to deposit some money. Since the receipt was required to be obtained she was waiting outside the branch, whereas, her husband was inside the bank to collect the receipt. The appellant was security guard and he was sitting outside the bank with gun. His gun fell from his hand and the bullet accidently hit the toe of the complainant who was a lady completely unknown to him. In my view, from the facts of the case, it is clear that at the highest, act on the part of the accused can be said to be grossly negligent act. It is correct to say that the toe of the injured was fractured, the wound was a grievous injury. However, in my view, the conviction ought to have been under Section 338 of the I.P.C. because grievous hurt was caused to the injured Gurmit Kaur by a rash and negligent act of

the accused. In the circumstances, the impugned judgment and order is quashed and set aside and the conviction and sentence imposed U/s. 325 of the I.P.C. is set aside and instead the accused is convicted under Section 338 and is sentenced to suffer R.I. for the period of four months and to pay a fine of Rs.5000/- in default to suffer R.I. for 6 months. In addition to the fine, he will also liable to pay compensation of Rs.10000/- under Section 357 of the I.P.C. This amount will be in addition to the fine amount and the compensation amount if paid will be payable to the injured Gurmit Kaur. The accused will be entitled to set off of the term which he has already under gone. The fine and compensation amount will be deposited within a period of eight weeks from today in the trial court. Appeal stands disposed off.

Cri. Application No.211 of 2006

1. As the appeal has been decided finally. This application for bail does not survive and accordingly, application stands disposed off.

(R. S. MOHITE, J.)